

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 05-1849 JH

DAKOTA FITZNER,

Defendant.

UNOPPOSED MOTION TO AMEND ORDER SETTING CONDITIONS OF RELEASE

The Defendant, DAKOTA FITZNER, by and through his attorney, Todd Hotchkiss of Frechette & Associates, P.C., hereby moves this Court, without opposition from the United States, to amend the May 1, 2006 Order of Setting Conditions of Release and enter an order directing Defendant into the custody of La Pasada Halfway House by 6:00 p.m. on January 27, 2011.

As grounds, defense counsel states as follows:

1. MR FITZNER was released pursuant to the May 1, 2006 Order Setting Conditions of release. According to that Order at page 2, condition (7), "The defendant shall: ... (o) refrain from any ... use of alcohol."
2. MR. FITZNER pleaded guilty on May 16, 2007 to Counts 1 and 3 of the Superseding Indictment.
3. MR. FITZNER is presently scheduled for sentencing on February 10, 2011.

4. On January 24, 2011, United States Probation Officer Sandra Day, who has supervised MR. FITZNER on pretrial release, informed undersigned counsel that MR. FITZNER had admitted consuming alcohol on or about January 15, 2011.

5. MR. FITZNER has a history of counseling and treatment and a few years on electronic monitoring and a sobriety, apparently has 3 or 4 prior violations for having consumed alcohol (and one in each of 2006 and 2007), became a father to a daughter, held down steady and successful employment at Ashley Furniture for a handful of years now, was a good husband and a good son, and now faces impending divorce from his wife, during almost 5 years of pretrial sentencing release.

6. MR. FITZNER is proceeding through divorce, the loss of his family life, caring for his mother, bearing the legacy of his father, facing sentencing in this matter, and under great pressure. He has endured a lot, his life has been torn apart, and he faces a very uncertain future. This motion arose out of MR. FITZNER's own statements to an agent of U.S. Pretrial Services during counseling administered by U.S. Pretrial Services that he had some drinks on a particular day.

7. Under these circumstances, MR. FITZNER, at the request of United States Probation, requests that the May 1, 2006 Order of Setting Conditions of Release be amended in the following ways:

A. The condition that MR. FITZNER be released to the third-party custody of La Pasada Halfway House and that MR. FITZNER reside only at La Pasada Halfway House in Albuquerque, New Mexico, until further order of the Court.

B. Such other and further conditions as this Court or the United States Pretrial Services Office deems reasonable or proper.

8. MR. FITZNER understands that if he fails to comply with the terms and conditions of his release, his release could be revoked and he could then immediately be taken into custody pending sentencing in this matter. MR. FITZNER also understands that he could be charged with additional crimes if he violates his conditions of release, depending on the nature of any such violations.

9. The parties agree that placement of MR. FITZNER in the custody of the La Pasada Halfway House, with any other reasonable conditions of release which United States Pretrial Services believes to be necessary, will provide such conditions to reasonably insure MR. FITZNER will not be a safety threat and will not be a risk of non-appearance at court hearings.

10. On January 26, 2011, counsel attempted to contact Assistant United States Attorney James R.W. Braun regarding this motion but Mr. Braun's voice message stated he is out of the office until January 28, 2011. Counsel assumes Mr. Braun would

not oppose this motion.

11. On January 24-26, 2011, U.S. Pretrial Services Officer Sandra Day did not oppose MR. FITZNER's release to La Pasada as requested.

WHEREFORE, the Defendant, DAKOTA FITZNER, respectfully requests this Court to enter an order amending the May 1, 2006 Order Setting Conditions of Release as requested herein. MR. FITZNER also requests such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Todd Hotchkiss
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CERTIFICATE OF SERVICE

I, Todd Hotchkiss, hereby certify that on January 27, 2011 I electronically filed through the CM/ECF system and that through that system opposing counsel James R.W. Braun, Assistant United States Attorney, will be served with a true and accurate copy.

/s/ Todd Hotchkiss
TODD HOTCHKISS